IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 852 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? YES

2 To be referred to the Reporter or not ? No

3 Whether their Lordships wish to see the fair copy of the judgment ? No

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? No

5 Whether it is to be circulated to the civil judge ? No

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DASHRATHBHAI M. DESAI(DESHANI) - Petitioner(s)
Versus
KENIKUMAR - Respondent(s)

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Appearance :

MR BC DAVE for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,
MR SP MAJMUDAR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 27/04/2007

ORAL JUDGMENT

1. Rule. Mr.S.P.Majmudar, learned advocate waives service of Rule. At the joint request of learned advocates, the matter is taken up for final disposal.

2. Present is the petition filed by the petitioner-original defendant, who is aggrieved by an order passed below Exh.15 by the learned 4th Additional Senior Civil Judge, Vadodara dated 4.12.2006 in Special Summary Suit No.905 of 2002. Exh.15 application was filed on 2.4.2003. The learned Judge by order under challenge directed the petitioner-defendant to defend the suit, “subject to payment of half of the principal outstanding amount as per the mutual agreement as shown in the plaint”.

3. The learned advocate for the petitioner has invited attention of this Court to the relevant part of the plaint, the amount demanded is Rs.15,30,000/- agreed in the referred mutual agreement. He submitted that, taking that amount to be the principal outstanding amount, Rs.7,65,000/- is required to be deposited. He submitted that, taking into consideration the contents of Exh.15 application, the petitioner is having an arguable case and the learned Judge ought to have granted him unconditional leave.

4. After the learned advocates for the parties are heard, it is deemed fit that this Special Civil Application be partly allowed, and the amount which is ordered to be deposited is reduced to Rs.2.00 lakhs (Rupees Two Lacs) which will test the bonafide of the petitioner defendant and which will take care of the interest of the original plaintiff-respondent herein and will restrain the defendant from prolonging the matter under one excuse or other.

5. In the result, order dated 4.12.2006 is modified. The amount ordered to be deposited is reduced to be Rs.2.00 lakhs (Rupees Two Lacs). Time to deposit is extended. Within 30 days from today the amount be deposited.

6. At the joint request of the learned advocates for the parties, the suit is expedited.

Rule is made absolute with no order as to costs.

(Ravi R.Tripathi, J.)

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